

Permitting & Assistance Branch Staff Report
Modified Solid Waste Facilities Permit for the
Kirby Canyon Recycling and Disposal Facility
SWIS No. 43-AN-0008
October 26, 2017

Background Information, Analysis, and Findings:

This report was developed in response to the City of San Jose, Department of Planning, Building and Code Enforcement, Local Enforcement Agency's (LEA) request for the Department of Resources Recycling and Recovery (Department) concurrence on the issuance of a proposed modified Solid Waste Facilities Permit (SWFP) for the Kirby Canyon Recycling and Disposal Facility, SWIS No. 43-AN-0008, located in City of San Jose and owned and operated by Waste Management of California, Inc. A copy of the proposed permit is attached. This report contains Permitting & Assistance Branch staff's analysis, findings, and recommendations.

The proposed permit was initially received on February 19, 2016. Due to deficiencies in the Closure and Postclosure Maintenance Plan, the proposed permit was withdrawn and returned to the LEA on April 6, 2016. A new proposed permit was received on September 7, 2017. Action must be taken on this permit no later than November 6, 2017. If no action is taken by November 6, 2017, the Department will be deemed to have concurred with the issuance of the proposed modified SWFP.

Proposed Changes

The following changes to the first page of the permit are being proposed:

	Current Permit (1993)	Proposed Permit
Name of Operator and Owner	Kirby Canyon Recycling and Disposal Facility (KCRDF)	Waste Management of California, Inc.
Permitted Area (in acres)	Total – 827	Total - 743
Design Capacity Remaining (cu. yds)	34.4 M	16,191,600
Estimated Closure Date	2022	2059

Other Changes include:

1. Updates to the following sections of the SWFP: "Findings", "Documents that describe and/or restrict the operation of the facility", and "LEA Conditions", including the rewording and/or deletions for the purpose of updating and/or clarifying operational requirements.

Key Issues:

The proposed permit will allow for the following:

1. Update owner name from Kirby Canyon Recycling and Disposal Facility (KCRDF) to Waste Management of California, Inc.
2. Update the total Permitted area from 827 acres to 743 acres to reflect actual permitted landfill boundary.
3. Update the estimated closure date from 2022 to 2059.

Background:

Kirby Canyon Recycling and Disposal Facility (KCRDF) is an existing Class III solid waste disposal facility located in the City of San Jose. KCRDF has been in operation since 1986, and is currently owned and operated by Waste Management of California, Inc. The facility operates under a full SWFP issued on September 3, 1993.

Findings:

Staff recommends concurrence in the issuance of the proposed modified SWFP. All of the required submittals and findings required by Title 27 of the California Code of Regulations (27 CCR), Section 21685, have been provided and made. Staff has determined that the California Environmental Quality Act (CEQA) requirements have been met to support concurrence. The findings that are required to be made by the Department when reaching a determination are summarized in the following table. The documents on which staff's findings are based have been provided to the Branch Chief with this Staff Report and are permanently maintained by the Waste Permitting, Compliance, and Mitigation Division.

27 CCR Sections	Findings	
21685(b)(1) LEA Certified Complete and Correct Report of Facility Information	The LEA provided the required certification in their permit submittal letter dated February 17, 2016.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(2) LEA Five Year Permit Review	A Permit Review Report was prepared by the LEA on October 16, 2015. The LEA provided a copy to the Department on October 16, 2015. The changes identified in the review are reflected in this permit revision.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(3) Solid Waste Facility Permit	Staff received a proposed Solid Waste Facilities Permit on September 7, 2017.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685 (b)(4)(A) Consistency with Public Resources Code 50001	The LEA in their permit submittal package received on February 17, 2016, provided a finding that the facility is consistent with PRC 50001. Waste	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

27 CCR Sections	Findings	
	Evaluation & Enforcement Branch (WEEB) staff in the Jurisdiction Compliance Unit found the facility is identified in the Countywide Siting Element, as described in the memorandum dated September 25, 2017.	
21685(b)(5) Preliminary or Final Closure Plan Consistency with State Minimum Standards	Engineering Support Branch staff in the Closure and Technical Support Section have found the Preliminary Closure/Postclosure Maintenance Plan consistent with State Minimum Standards as described in their email dated November 4, 2016.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(6) Known or Reasonably Foreseeable Corrective Action Cost Estimate	Engineering Support Branch staff in the Closure and Technical Support Section have found the written estimate to cover the cost of known or reasonable foreseeable corrective action is approved as described in their memorandum dated September 15, 2016.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(7)(A) Financial Assurances	Permitting and Assistance Branch staff in the Financial Assurances Unit found the Financial Assurances for closure, postclosure and corrective action in compliance as described in their memorandum dated October 10, 2017.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(7)(B) Operating Liability Insurance	Permitting and Assistance Branch staff in the Financial Assurances Unit found the Operating Liability in compliance as described in their memorandum dated October 10, 2017.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(8) Operations Consistent with State Minimum Standards	WEEB staff in the Inspections and Enforcement Agency Compliance Unit found that the facility was in compliance with all operating and design requirements during an inspection conducted on October 4, 2017. See Compliance History below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(9) LEA CEQA Finding	The LEA provided a finding in their permit submittal package received on February 19, 2016, that the proposed permit is consistent with and supported by the existing CEQA documentation. See the Environmental Analysis below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21650(g)(5) Public Notice and/or Meeting, Comments	A Public Notice was posted by the LEA on January 7, 2016. No written comments were received by LEA or Department staff. See Public Comments section below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

27 CCR Sections	Findings	
CEQA Determination to Support Responsible Agency's Findings	The Department is a responsible agency under CEQA with respect to this project. Permitting and Assistance Branch staff has determined that the CEQA record can be used to support the Branch Chief's action on the proposed modified SWFP.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

Compliance History:

WEEB staff in the Inspections and Enforcement Agency Compliance Unit conducted a pre-permit inspection on October 4, 2017 and found that the facility is in compliance with applicable state minimum standards and permit conditions.

Below are the details of the landfill's compliance history based on the LEA's monthly inspection reports during the last five years:

- 2017 (June) – One violation of PRC 44014 (b) – Operator Complies with Terms and Conditions for receiving dead animals.
- 2015 -2016 – No violations were noted.
- 2014 (June) – One violation of T27 CCR Section 21780 – Closure Plan.
- 2012 – 2013 - No violations were noted.

All violations were corrected to the satisfaction of the LEA.

Environmental Analysis:

Under California Environmental Quality Act (CEQA), the Department must consider, and avoid or substantially lessen where possible, any potentially significant environmental impacts of the proposed SWFP before the Department concurs in it. In this case, the Department is a Responsible Agency under CEQA and must utilize the environmental document prepared by the City of San Jose Planning Department, acting as Lead Agency, absent changes in the project or the circumstances under which it will be carried out that justify the preparation of additional environmental documents and absent significant new information about the project, its impacts and the mitigation measures imposed on it.

The changes that will be authorized by the issuance of the proposed permit include:

1. Update owner name from Kirby Canyon Recycling and Disposal Facility (KCRDF) to Waste Management of California, Inc.
2. Update the total Permitted area from 827 acres to 743 acres to reflect actual permitted landfill boundary.
3. Update the estimated closure date from 2022 to 2059.

The City of San Jose, Department of Planning, Building and Code Enforcement (LEA), has provided a finding that the proposed modified SWFP is consistent with and supported by existing CEQA analysis.

An Environmental Impact Report (EIR), State Clearinghouse No. 83052408, was circulated for a 45-day comment period from July 21, 1983 to September 2, 1983. The EIR analyzed the impacts associated with the operations of a proposed sanitary landfill on an 827-acre project site. The EIR identified significant and unavoidable impacts to visibility, flora and fauna on the project site. The Final EIR was certified by the Lead Agency on September 15, 1983. A Negative Declaration (ND), State Clearinghouse No. 93033053, was circulated for a 30-day comment period from March 15, 1993 to April 14, 1993. The project analysis concluded there are no significant impacts. The ND was adopted by the Lead Agency on April 14, 1993.

Staff recommends that the Department, acting as a Responsible Agency under CEQA, utilize the EIR and ND as prepared by the Lead Agency in that there are no grounds under CEQA for the Department to prepare a subsequent or supplemental environmental document or assume the role of Lead Agency for its consideration of the proposed modified SWFP. Department staff has reviewed and considered the CEQA record and recommends that the EIR and ND are adequate for the Branch Chief's approval of the proposed project for those project activities which are within the Department's expertise and/or powers, or which are required to be carried out or approved by the Department.

The administrative record for the decision to be made by the Department includes the administrative record before the LEA, the proposed modified SWFP and all of its components and supporting documentation, this staff report, the ND adopted by the Lead Agency, and other documents and materials utilized by the Department in reaching its decision on concurrence in, or objection to, the proposed modified SWFP. The custodian of the Department's administrative record is Ryan Egli, Legal Office, Department of Resources Recycling and Recovery, P.O. Box 4025, Sacramento, CA 95812-4025.

Public Comments:

The project document availability, hearings, and associated meetings were noticed consistent with the SWFP requirements. The LEA posted a Public Notice on January 7, 2016, in the City of Morgan Hill. No written comments were received by the LEA or Department staff.

Department staff provided an opportunity for public comment during the CalRecycle Monthly Public Meeting on September 19, 2017 and October 17, 2017.